

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

**Proposing rule making related to the control of outdoor advertising devices
and providing an opportunity for public comment**

The Transportation Department hereby proposes to amend Chapter 117, “Outdoor Advertising,” and to rescind Chapter 120, “Private Directional Signing,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 306C.11 and 307.12, 23 CFR Section 750.705, and 23 U.S.C. Section 131.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 306B and 306C as amended by 2021 Iowa Acts, Senate File 548; 23 CFR Section 750.705; and 23 U.S.C. Section 131.

Purpose and Summary

This proposed rule making amends Chapter 117 and rescinds Chapter 120 to conform with 2021 Iowa Acts, Senate File 548, which amends Iowa Code chapters 306B and 306C. Senate File 548 redefines “advertising device” and strikes several exceptions listed in Iowa Code section 306C.11. These exceptions have been applied unequally and are based on the content of signs, which are expressions of speech. It is likely that the practice of basing these exceptions on content abridges the right to freedom of speech as protected by the First Amendment of the U.S. Constitution. The proposed amendments to Chapter 117 continue the process of eliminating these exceptions. The rescission of Chapter 120 is necessary following the repeal of Iowa Code section 306C.11(4), which contained another content-based exception for “directional signs.”

The proposed amendments to Chapter 117 strike all rules and subrules that pertain to definitions, provisions, and restrictions associated with different categories or types of signs based on message content. If a sign qualifies as an “advertising device,” as defined in Iowa Code sections 306B.1 and 306C.10 as amended by 2021 Iowa Acts, Senate File 548, sections 1 and 4, the sign will be subject to one set of standards for advertising devices, rather than standards based on the content of the message. The determining factor on whether to regulate the sign as an advertising device will be whether remuneration (compensation) is being paid or earned in exchange for the erection, display or existence of the sign.

A new subrule 117.2(2), concerning “rebuttable presumption,” is proposed to be added to provide the Department with the ability to regulate a sign as an advertising device, if sufficient documentation is not forthcoming from individuals involved with the sign. Without this ability, the opportunity exists for a person to claim that a sign is not an advertising device, while refusing to offer any information for the Department to make a determination. The process used to determine remuneration will not be overly intrusive. A simple form may be used for individuals involved with the sign to certify that no remuneration is being exchanged for the sign. If one of the parties opts to not have the forms completed, it is assumed that remuneration exists, and the sign will qualify as an “advertising device.” Advertising devices may still be permitted, but the standard permitting requirements (zoning, spacing, etc.) will apply to them.

A new subrule 117.2(7) is proposed to be added in order to grandfather in signs that are currently permitted through the private directional signing program. Current provisions exist for these signs in Chapter 120, but this chapter is being proposed to be rescinded because this program relies upon content-based factors. The effect of rescinding Chapter 120 will be minimal, because the Department has not received an application for this program in over two years.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa. The fiscal note for 2021 Iowa Acts, Senate File 548, explains the potential for a loss of \$53.2 million in federal highway funding because of inaction. The proposed amendments implement the legislative changes to ensure that the Department is not put in a position of risk regarding federal highway funds.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

Public Comment

Any interested person may submit written comments concerning this proposed rule making or may submit a written request to make an oral presentation at a public hearing. Written comments or requests to present oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on August 31, 2021. Comments should be directed to:

Tracy George
Department of Transportation
DOT Rules Administrator, Government and Community Relations
800 Lincoln Way
Ames, Iowa 50010
Email: tracy.george@iowadot.us

Public Hearing

If requested, a public hearing to hear oral presentations will be held on September 2, 2021, at 1 p.m. via conference call. Persons who wish to participate in the conference call should contact Tracy George before 4:30 p.m. on August 31, 2021, to facilitate an orderly hearing. A conference call number will be provided to participants prior to the hearing.

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact Tracy George, the Department's rules administrator, and advise of specific needs.

The public hearing will be canceled without further notice if no oral presentation is requested.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Rescind the definitions of “Development directory sign,” “Directional and official signs and notices,” “Directional sign,” “Obsolete sign,” “Official sign or notice,” “On-premises sign,” “Public utility sign,” and “Service club or religious notice” in rule 761—117.1(306B,306C).

ITEM 2. Amend rule 761—117.2(306B,306C) as follows:

761—117.2(306B,306C) General provisions.

117.2(1) Scope. This chapter of rules pertains to all advertising devices which are visible from the main traveled way of any primary highway, with the following exceptions:

a. No change.

b. ~~Except where specified otherwise, this~~ This chapter does not apply to official traffic control devices, logo signing, or tourist-oriented directional signing, or private directional signing.

117.2(2) Rebuttable presumption. The department may regulate signs as advertising devices except when sufficient documentation from persons reasonably identified as potential payors or receivers of remuneration is available to the department showing or certifying that remuneration does not exist.

~~117.2(2)~~ **117.2(3) Contact information.** Inquiries, requests for forms, and applications regarding this chapter shall be directed to the Advertising Management Section, Traffic and Safety Bureau, Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

~~117.2(3)~~ **117.2(4) Unauthorized signs, signals, or markings.** Any sign, signal, marking or device prohibited by Iowa Code section 321.259 is a public nuisance and shall be removed by the department if it is within the department’s jurisdiction.

~~117.2(4)~~ **117.2(5) Advertising devices obstructing the view of a highway or railway.** Any advertising device that obstructs the view of any portion of a public highway or railway track in violation of Iowa Code ~~subsection~~ section 318.11(2) or 657.2(7) is a public nuisance, which shall be abated as provided in Iowa Code chapter 657.

~~117.2(5)~~ **117.2(6) Advertising devices within the right-of-way.** Any advertising device placed or erected within the right-of-way of any primary highway in violation of Iowa Code chapter 318 is subject to removal in the manner specified in Iowa Code chapter 318.

117.2(7) Advertising devices permitted under the private directional sign program between May 26, 1983, and July 1, 2021.

a. Any advertising device permitted as a private directional sign by the department between May 26, 1983, and July 1, 2021, may continue to exist, even if nonconforming to this chapter, with the following conditions:

(1) The permit is renewed each year by payment of a \$15 fee on or before July 1.

(2) The permit may not be transferred to an entity representing a different activity or site.

(3) The advertising device is not modified or destroyed.

(4) The advertising device is properly maintained with legible copy.

(5) The design or display of the advertising device does not violate any federal or state laws or regulations.

b. Advertising devices which fail to meet any of the conditions in this subrule shall be subject to removal as provided for in rule 761—117.8(306B,306C).

ITEM 3. Amend subrule 117.3(1) as follows:

117.3(1) Prohibition. Advertising devices shall not be erected, maintained or illuminated unless they comply with the following:

a. No change.

b. No advertising device shall interfere with, imitate or resemble any official sign, signal or device erected by the department within the right-of-way of any primary highway.

c. and d. No change.

e. No off-premises advertising device shall include any flashing, intermittent or moving light or lights except those signs giving public service information such as time, date, temperature, weather and news. No on-premises sign located within the adjacent area of an interstate highway but outside an area zoned and used for commercial or industrial purposes, as defined in rule 761—117.1(306B,306C),

shall include any flashing, intermittent or moving light or lights except those signs giving public service information such as time, date, temperature, weather and news. Any variation or addition to the stated service information is subject to department approval. This paragraph does not prohibit an LED display, provided:

(1) to (3) No change.

f. No change.

g. No advertising device subject to the more restrictive controls of the bonus Act shall be obsolete.

h. to *k.* No change.

l. No off-premises advertising device may be erected within the adjacent area of any primary highway that has been designated a scenic highway or scenic byway if the advertising device will be visible from the highway. However, if the off-premises advertising device was in existence at the time of the designation, subsequent permitting may occur in accordance with Iowa Code section 306C.18.

m. An advertising device shall not be constructed or reconstructed beyond the adjacent area in unincorporated areas of the state if the advertising device is visible from the main traveled way of any primary highway except for on-premises signs and official signs and notices.

ITEM 4. Rescind and reserve rule **761—117.4(306B,306C)**.

ITEM 5. Amend rule 761—117.5(306B,306C), introductory paragraph, as follows:

761—117.5(306B,306C) Location, size and spacing requirements. This rule does not apply to on-premises signs.

ITEM 6. Rescind and reserve paragraph **117.5(5)“j.”**

ITEM 7. Amend rule 761—117.6(306C), introductory paragraph, as follows:

761—117.6(306C) Outdoor advertising permits and fees required. The owner of an advertising device must apply to the department for an outdoor advertising permit if the device is visible from the main traveled way of any primary highway and the device is regulated by subrule 117.4(1) or rule 761—117.5(306B,306C) subject to subrule 117.2(1).

ITEM 8. Amend paragraph **117.6(9)“a”** as follows:

a. A blank sign is:

(1) No change.

(2) An advertising device that does not display copy. “This space for rent” or a similar message is not copy.

~~(3) An advertising device that qualifies as an obsolete sign.~~

ITEM 9. Rescind and reserve rule **761—117.7(306C)**.

ITEM 10. Amend subrule 117.8(2) as follows:

117.8(2) Removal from right-of-way and other state-owned property. The department shall remove advertising devices erected upon the right-of-way of any primary highway; see subrule ~~117.2(5)~~ 117.2(6). Unauthorized advertising devices erected upon other property owned by the state of Iowa are subject to removal by the agency, board, commission or department having control or jurisdiction of the property.

ITEM 11. Amend subrule 117.10(2) as follows:

117.10(2) The owner of an outdoor advertising permit which has been revoked or canceled by the department may contest the decision in accordance with 761—Chapter 13. The request for a contested case hearing shall be submitted in writing to the director of the traffic and safety bureau at the address in subrule ~~117.2(2)~~ 117.2(3). The request shall be deemed timely submitted if it is delivered or postmarked within 30 days of the owner’s receipt of the revocation notice issued by the department.

ITEM 12. Rescind and reserve rule **761—117.15(306C)**.

ITEM 13. Amend **761—Chapter 117**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapters 306B and 306C as amended by 2021 Iowa Acts, Senate File 548, and section 306D.4, 23 U.S.C. 131, and 23 CFR 750.705(h).

ITEM 14. Rescind and reserve **761—Chapter 120.**